



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[Doc. No. AMS-FV-14-0091; FV15-929-1 PR]

Cranberries Grown in States of Massachusetts, et al.;

Revising Determination of Sales History

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the Cranberry Marketing Committee (Committee) to revise the determination of sales history provisions currently prescribed under the cranberry marketing order (order). The Committee, which consists of 13 growers and 1 public member, locally administers the order regulating the handling of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. Under the order, there are two different sales history calculations that have been established for this program. This action would clarify when the different methods for calculating sales

history would be used. This action would also remove the fresh fruit exemption from one of the calculations.

DATES: Comments must be received by [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet:

<http://www.regulations.gov>. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at:

<http://www.regulations.gov>. All comments submitted in response to this proposal will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and

Agreement Division, Fruit and Vegetable Program, AMS, USDA;
Telephone: (863) 324-3375, Fax: (863) 291-8614, or E-mail:
Doris.Jamieson@ams.usda.gov or
Christian.Nissen@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jeffrey.Smutny@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement and Order No. 929, as amended (7 CFR part 929), regulating the handling of cranberries grown in the states of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 12866, 13563, and 13175.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

There are two sales history calculations in effect under two separate sections of the order. This action would clarify when the different methods for calculating sales history would be used. This proposed rule also invites comments on the removal of the exemption for fresh

fruit from the sales history calculation found in § 929.149. The Committee unanimously recommended these changes at meetings held on February 10, and August 20, 2014.

The order provides authority for volume control in the form of a producer allotment program. When in effect, this program limits the quantity of cranberries that handlers may purchase or handle on behalf of growers in years of oversupply. Each year, prior to determining if volume regulation is needed, grower sales histories are calculated. The sales history averages recent years' sales data using information submitted by each grower on a production and eligibility report filed with the Committee. If the Committee determines that volume regulation is needed, a producer allotment percentage is calculated. Each grower's allotment of cranberries eligible for handling is then calculated by multiplying the allotment percentage by the grower's sales history.

Section 929.48 of the order contains provisions for computing an annual grower sales history. Section 929.48 also provides that the Committee, with the approval of the Secretary, may establish alternative grower's sales history calculations as warranted. One such alternative

calculation is established in § 929.149. This alternative calculation supplements the calculation found in § 929.48 by including an additional sales history for growers with new and renovated acreage. It also provides that the sales history be computed for processed fruit only, with fresh fruit sales deducted from the calculation. The alternative calculation method established in § 929.149 was developed for the 2001-02 marketing year, the last time volume regulation was implemented, and was recently revised so that it could be used for any season.

The Committee believes the provisions in the alternative sales history calculation are beneficial and provide equity to growers who have recently planted or renovated acreage. However, the alternative method for calculating sales history requires physical verification of the renovated or new acreage, thus resulting in additional costs to the Committee. When considering the costs and the benefits of both sales history calculation methods, the Committee concluded that the method in § 929.48 was adequate for annual calculations when volume regulation was not anticipated. However, due to the importance of a grower's sales history in the determination of that grower's allotment during years of volume regulation, the

inclusion of new and renovated acreage is paramount.

Accordingly, the Committee concluded that the sales history calculation in § 929.149 should be used in all years when volume regulation is anticipated.

Consequently, at its February 10 and August 20, 2014, meetings, the Committee recommended that the alternative calculation method found in § 929.149 only apply during times when a producer allotment volume regulation is being implemented. When a producer allotment volume regulation is not being implemented, the Committee would calculate grower's sales history according to the provisions provided in § 929.48 of the order.

The Committee also recommended revising the alternative calculation method in § 929.149 by removing the exemption for fresh fruit sales. Committee members stated that automatically exempting fresh fruit from the sales history calculation provides the grower with an inaccurate representation of their total sales. Further, the exclusion of fresh fruit affects the industry's total sales history, which is used to determine the allotment percentage under a producer allotment program. The Committee believes if any exemptions to future producer allotment calculations are warranted, such exemptions

should be considered and recommended to USDA as part of a proposed volume regulation. Removing the fresh exemption provision from the alternative calculation would allow the Committee to determine, on an as-needed basis, whether or not volume regulation should apply to the fresh cranberry supply.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 1,300 cranberry growers in the regulated area and approximately 45 cranberry handlers who are subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business

Administration (SBA) as those having annual receipts of less than \$750,000 and small agricultural service firms are defined as those having annual receipts of less than \$7,000,000 (13 CFR 121.201).

According to industry and Committee data, grower prices ranged between \$15 and \$47 per barrel for cranberries during the 2012-13 marketing year, and total sales were around 7.8 million barrels. Based on production data and grower prices, the average annual grower revenue is below \$750,000. Using Committee information and shipment data, 44 out of the 45 cranberry handlers could also be considered small businesses under SBA's definition. Therefore, the majority of cranberry growers and handlers may be classified as small entities.

This proposal would revise the rules and regulations pertaining to the determination of sales history currently prescribed in § 929.149 of the order. There are two sales history calculations under two separate sections of the order. This action would clarify when the different methods for calculating sales history would be used. It would also remove the exemption for fresh fruit from the calculation method found in § 929.149. These changes were unanimously recommended by the Committee at meetings held on February

10, and August 20, 2014. Authority for these changes is provided in § 929.48 of the order.

It is not anticipated that this action would impose any additional costs on the industry. Each year, the Committee is required to calculate a sales history for each grower. This rule would clarify that the alternative sales history calculation method established under § 929.149 would only apply when a producer allotment regulation is being implemented. The calculation method found in § 929.48 would be used when volume regulation is not being implemented.

Removing the fresh exemption provision from the calculation found in § 929.149 would allow the Committee to determine, on an as-needed basis, whether or not volume regulation should apply to the fresh cranberry supply. It also would provide growers, and the Committee, with a more accurate representation of their sales history. The benefits of this proposed rule are not expected to be disproportionately greater or lesser for small handlers or producers than for large entities.

The Committee considered the alternative of making no changes to the rules and regulations pertaining to the determination of sales history. However, the Committee

recognized that this change would help the industry avoid the additional costs of acreage verification in years when volume regulation is not being implemented. Also, the Committee agreed that the current grower sales history tabulation exempting fresh fruit was not representative of the actual sales. Therefore, this alternative was rejected.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0189, Generic Fruit Crops. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This action would not impose any additional reporting or recordkeeping requirements on either small or large cranberry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other

information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

Further, the Committee's meetings were widely publicized throughout the cranberry industry and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the February 10, and August 20, 2014, meetings were public meetings and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at:
<http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate because this proposed rule would need to be in place as soon as possible as the Committee is beginning discussions regarding establishing a producer allotment volume regulation for the coming season. As such, it would be important to have these changes in place as the Committee moves forward with these discussions and potential implementation. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 929 is proposed to be amended as follows:

PART 929 - CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

1. The authority citation for 7 CFR part 929 continues to read as follows:

Authority: 7 U.S.C. 601-674.

§929.149 [Amended]

2. In § 929.149, the words "when a producer allotment volume regulation is in effect" are added to the end of the introductory text, and paragraphs (e) and (f) are removed.

Dated: April 16, 2015.

Rex A. Barnes,
Associate Administrator,
Agricultural Marketing Service.

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